Keys to Good Disclosure: A Municipal Securities Disclosure Symposium

Overview of SEC Disclosure Regulations by Richard Hiscocks

What is the Law?

The Basic Laws Requiring Disclosure

- Common Law of Deceit or Fraud or Breach of Fiduciary Obligation
- Federal Securities Laws
 - Securities Act of 1933, Section 17(a) See Exhibit A
 - Securities Exchange Act of 1934, Section 10(b)
 - SEC Rule 10b-5 See Exhibit B
 - SEC Rule 15c2-12 See Exhibit C

How do I Comply With the Law?

Procedures to Satisfy Disclosure Laws

- Disclosure Documentation
 - Official Statement—"marketing document" or "insurance policy"?
 - Other Documentation
 - Disclosure over the Internet
 - Shifting the burden—private placements with investor's letters

- Due Diligence Review
 - Document Review Sessions
 - Due Diligence Meeting
 - Due Diligence visit to borrower by counsel

- SEC Reports Evaluating Disclosure
 - Orange County (1996)
- SEC Regulations Suggesting Disclosure
 - "Fair Disclosure" Regulation (2000)

 See Exhibit D

- Continuing Disclosure
 - Undertaking —Continuing Disclosure Agreement
 - Implementation of Undertaking

What May Happen if I Don't Comply With the Law?

Enforcement of Disclosure Laws

- SEC Actions
 - Investigations
 - formal and informal
 - subpoena powers
 - Injunctive Actions in Federal Court
 - stop illegal activities
 - disgorge "ill-gotten gains"
 - maintain integrity of the marketplace

- Administrative Proceedings
 - monetary penalties (broker dealers)
 - cease and desist orders—temporary and permanent
- Criminal Referrals to Justice Department
 - securities law violations
 - mail fraud and wire fraud
 - money laundering, extortion and racketeering

Private Enforcement Actions

- securities class action litigation
- private attorneys general
- "whistleblower" actions

QUESTIONS AND ANSWERS